

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

JOHN ARMA, III)	
Claimant)	
)	
VS.)	
)	
TRIPLE CHECK BUSINESS SERVICE INC.)	
Respondent)	Docket No. 1,014,410
)	
AND)	
)	
LIBERTY MUTUAL INS. CO.)	
Insurance Carrier)	

ORDER

Claimant requests review of the February 17, 2004 preliminary hearing Order entered by Administrative Law Judge (ALJ) John D. Clark.

ISSUES

The ALJ found claimant sustained a work-related injury on June 17, 2003, but concluded that his present physical complaints and alleged need for treatment are due to a subsequent and unrelated physical assault that occurred in October 2003. Thus, claimant was denied any benefits under the Kansas Workers Compensation Act.

The claimant requests review of this finding. Claimant alleges the ALJ exceeded his jurisdiction "by denying appointment of an authorized treating physician for [c]laimant's neck, right shoulder and back even though he found the injuries to arise out of and in the course of employment."¹

Respondent argues there is no jurisdiction for the Appeals Board (Board) to hear this matter because the issue is nothing more than a denial of medical treatment, which is not an appropriate issue for appeal under K.S.A. 44-534a. Thus, respondent maintains claimant's appeal must be dismissed.

¹ Claimant's Brief at 1 (filed Mar. 5, 2004).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, the Board makes the following findings of fact and conclusions of law:

Claimant alleges he sustained a work-related injury on June 17, 2003 when he fell out of a van, hurting his right shoulder. Claimant testified he reported this accident to his supervisor, Josh Crowe, on the same date. Respondent does not materially disagree with this contention, although Mr. Crowe testified that the fall from the van occurred on June 10th or 11th, rather than the 17th.

Respondent apparently directed claimant to his own family physician for treatment. On July 8, 2003, claimant sought treatment with Dr. J. Michael Patton. During this visit, claimant referenced a fall out of a van while working on June 17, 2003. Claimant complained of right shoulder pain and was diagnosed with a right shoulder strain. He was again seen by Dr. Patton on September 16, 2003 for other complaints. There is no mention of the work-related injury or of complaints to the right shoulder during this visit.

On October 6, 2003, claimant returned to see Dr. Patton. During this visit claimant reported being beaten up by "8-10 guys".² Claimant sustained "bilateral black eyes with dark purple ecchymosis to both upper and lower eyelids."³ In addition to the observable scratches and bruises he concluded claimant had most likely bruised his kidneys leaving him with blood in his urine.⁴ No specific mention of the shoulder is made during this visit. Claimant was given pain medication and told to call if his condition changed.

Following a preliminary hearing, the ALJ concluded claimant had sustained a compensable injury on June 17, 2003. He declined to order medical treatment, however, as he found the present need for medical treatment was, more probably than not, a result of the bar fight in October 2003.⁵

An ALJ's preliminary order under K.S.A. 44-534a is not subject to review by the Board unless it is alleged that the ALJ exceeded his or her jurisdiction in granting or denying the preliminary hearing benefits.⁶ Alternatively, "[a] finding with regard to a disputed issue of whether the employee suffered an accidental injury, whether the injury

² P.H. Trans., Ex. 1.

³ *Id.*

⁴ *Id.*

⁵ ALJ Order (Feb. 17, 2004).

⁶ K.S.A. 2002 Supp. 44-551(b)(2)(A).

arose out of and in the course of the employee's employment, whether notice is given or claim timely made, or whether certain defenses apply, shall be considered jurisdictional, and subject to review by the board."⁷

In this instance, the issue the Board must address is whether claimant's request for medical treatment is attributable to an injury that arose out of and in the course of his employment or to his subsequent intervening assault. As such, the Board has jurisdiction under K.S.A.44-534a.

The ALJ concluded claimant's present request for treatment was attributable to the October 2003 assault. After considering the evidence offered at the preliminary hearing, the Board agrees with the ALJ. The October 2003 assault was a rather serious event, leaving claimant with significant injuries to his head, torso and to internal organs. While receiving treatment for those injuries, claimant voiced no complaints to his right shoulder. In fact, other than at the preliminary hearing, claimant has not expressed any shoulder pain to any medical personnel since July 8, 2003.

Based upon the evidence presented to date, the Board finds no reason to reverse the ALJ's preliminary hearing Order. As provided by the Workers Compensation Act, preliminary hearing findings are not final, but subject to modification upon a full hearing on the claim.⁸

WHEREFORE, it is the finding, decision and order of the Board that the preliminary hearing Order of Administrative Law Judge John D. Clark dated February 17, 2004, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of April, 2004.

BOARD MEMBER

c: Randy S. Stalcup, Attorney for Claimant
Tom Walsh, Attorney for Respondent and its Insurance Carrier
John D. Clark, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director

⁷ K.S.A. 44-534a(a)(2)(Furse 2000).

⁸ *Id.*